

(2020) 08 GUJ CK 0283
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 12171 Of 2020

Dilipbhai Rakhabhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 201, 302
Gujarat Police Act, 1951 — Section 135

Citation : (2020) 08 GUJ CK 0283

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Kirit R Chaudhar, Moxa Thakkar

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This Application is filed by the Applicant - Accused under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with FIR No. 11195050200585 of 2020 registered with Tharad Police Station, District Banaskantha for the offences punishable under Sections 302, 201 and 34 of Indian Penal Code and Section 135 of the Gujarat Police Act.

2. Heard learned Advocate Mr. Kirit Chaudhari for the Applicant and learned APP Ms. Moxa Thakkar for the Respondent State through Video Conference.

3. Rule. Learned APP waives service of Rule for the Respondent State of Gujarat.

Factual Matrix of the Case:

4. The case of the prosecution is that the complainant is residing with his mother at the address given in the FIR and they are three brothers in the family and the eldest one is Shivrambhai, the one next to him is Savdasbhai and the youngest of all is the complainant and that none of them are married. Their father had

passed away some 6-7 years back and all the brothers are residing with their mother and that they are doing the agricultural activities. It is the say that on 19.06.2020, in the afternoon, the complainant along with his two brothers and mother were in their agricultural field and at that time his elder brother Shivrambhai left the field by saying that from the house he would be going to Tharad and as he did not return back after about two days, attempts were made to contact his brother, but no contact could be established.

4.1 It is stated that as the complainant failed to trace out his brother, he gave an information about his missing brother to the Tharad Police Station and on the date of complaint when the police inquired before the complainant with Savdasbhai, he seems to have said that as Shivrambhai was an hindrance in the illicit relationship maintained by Savdasbhai with his Aunt, he committed murder of Shivrambhai and on 19.06.2020 when Shivrambhai was going to the house of Dhudi Mami, she informed Savdasbhai on phone and that they may finish him off that day; and that he by walking, reached the house at Hathvada at the place of Dhudi Mami by hiding himself and with the help of Axe lying at the house, caused assault on the head of Shivrambhai, who was sleeping outside and his body was packed in a sack with the help of Dhudi Mami and her son Dilipbhai, and threw at the field in the heap of Jeera and ignited it.

4.2 It is stated that left out bones were packed in a sack and threw the same in the Narmada canal near Vami village. In this way the brother of the complainant Savdasbhai has admitted the guilt. For the said offence, the complaint came to be lodged against the present petitioner and co-accused.

Submission of the Parties:

5. Learned Advocate for the Applicant / Accused has submitted that pursuant to the FIR, the role attributed to the present applicant is only destroying the evidence and not more than that since the offence was already committed, thereafter the present applicant was alleged to destroy the bones of the deceased, so the offence is under Section 201 of the IPC. The Applicant Accused is innocent as he has not taken part in the offence as alleged. He has family roots in the society and therefore, he is not likely to flee away from justice. That he will abide by whatever conditions imposed by the Hon'ble Court. He has further vehemently submitted that there is no direct involvement of the Applicant Accused in the present case so far as allegation is concerned. There are no antecedents against the Applicant Accused. He has therefore prayed that discretion may kindly be exercised and grant regular bail to the Applicant Accused.

6. Per contra, learned APP Ms. Thakkar has vehemently argued that the offence is under Section 302 read with Sections 201 and 34 of the IPC, though there is no antecedent, the discretion may not be exercised and ultimately she has opposed for enlarging on bail, looking to the nature and gravity of offence, involvement of the Applicant / Accused. That the charge sheet is not filed.

Therefor, learned APP has opposed for regular bail before charge-sheet.

Merits of the Case:

7. This court has considered the following aspects:

- (a) The role attributed to the present applicant is under Section 201 of IPC only.
- (b) That even if it is a prima facie case, then also as such there is no antecedent.
- (c) Further as per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.
- (d) That the learned Advocate for the Applicant has submitted that the Applicant Accused is not likely to flee away.
- (e) That the Applicant Accused is in custody since 03.07.2020.
- (f) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is an exception and there should not be pre- trial punishment.

8. Having heard the learned Advocates for both the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, availability of the Applicant Accused at the time of Trial etc. and the role attributed to the present Applicant accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicant Accused - DILIPBHAI RAKHABHAI PATEL is ordered to be released on regular bail in connection with I FIR No. 11195050200585 of 2020 registered with Tharad Police Station, District Banaskantha on executing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that he shall:

- (a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- (b) maintain law and order and not to indulge in any criminal activities.
- (c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.
- (d) provide his contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.
- (e) file an affidavit stating his immovable properties whether self acquired or

ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, he shall file an Affidavit to that effect.

(h) mark presence before the concerned Police Station every week between

11.00 am to 1.00 pm till submission of the charge-sheet.

(i) shall maintain all the rules and regulations framed by the Municipality regarding contemporary status of corona virus/Covid-19, State Government or by any competent authority, including social distancing.

9. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

10. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicant forthwith only if he is not required in connection with any other offence for the time being.

11. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.